IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2228 OF 2007
WITH
WRIT PETITION NO. 2726 OF 2007
WITH
WRIT PETITION NO. 2763 OF 2007

K.J.Somaiya Medical College &
Research Centre, Sion and Anr. .. Petitioners.

V/s.

1. Maharashtra University of Health
Sciences and others. .. Respondents.

Mr. K.K.Jadhav for the Petitioners.

Mr.R.V.Govilkar for the Respondent Nos. 1 and 2.

Mr. A.H.Palekar, AGP for the Respondent No.6.

Mr.C.R.Sadasivan & Mr.N.M.Ganguli for Respondent No.5.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 17th APRIL, 2007.

P.C.:

. The Petitioners are running a Medical College since 1991. They were earlier affiliated to Bombay University and now with the Maharashtra University of Health Sciences. Right from its inception, the college has been recognised by the Medical Council of India.

2. The Respondent No.5 in Writ Petition No. 2228 of 2007, was appointed on 31.07.1991 as Lecturer in Biochemistry as she holds degree in B.Sc.(Microbiology, Chemistry), M.Sc. (Medical Biochemistry by research) and Ph.D. (applied Biology by research); Respondent No.5 in Writ Petition No. 2726 of 2007 was appointed as Assistant Lecturer in Microbiology on 09.11.1993. She holds the qualification of B.Sc.(Microbiology) and M.Sc.(Medical Microbiology); the Respondent No.5 in Writ Petition No. 2763 of 2007 was appointed as Lecturer in Physiology on 04.07.1991 and holds the qualification of B.Sc. (Zoology), M.Sc.(Zoology) and Ph.D.(Zoology). They have been regularly appointed and are full timers in the college of the petitioners. The said respondents at the relevant time met with the qualifications as laid down by the Bombay University. The Medical Council of India at no point of time raised any objection about their appointments.

3. The petitioner’s college stood dis-affiliated from the Mumbai University and came to be affiliated with the Respondent No.1 in the year 1998, when the Maharashtra University of Health Sciences was established. It appears that the Medical Council of

India has framed Regulations in the year 1998. Schedule-I to the regulations sets out that every appointing authority before making an appointment to a teaching post in a medical college or institution shall observe the norms set out thereunder. Clause 2 to the said Schedule sets out that in the departments of Anatomy, Physiology, Biochemistry, Pharmacology and Microbiology, non-medical teachers may be appointed to the extent of 30% of the total number of posts in the department. A non-medical approved medical M.Sc. qualification shall be a sufficient qualification for appointment as Lecturer in the subject concerned but for promotion to higher teaching post a candidate must possess the Ph.D.degree in the subject.

4. It will be clear from these regulations that they will come into force from that date. In fact the brochure of the Regulations on Graduate Medical Education, 1997 shows that it has been made effective from May, 1997.

5. The Grievance Committee of the University to whom the petitioners had made grievance directed their reinstatement. The petitioners have approached this court on the ground that the Medical Council of India has intimated to them that as the concerned teachers

have not obtained the degree in M.Sc.,Ph.D. from medical faculty, they cannot be approved for the teaching posts in the medical college.

6. We presume that the test in all such matters is whether, when the concerned respondents were first appointed, they were duly qualified. The petitioners agree that the respondents teachers were duly qualified in terms of the rules existing at the time of their appointments and the Medical Council of India had permitted them to teach without any objection till they were affiliated to the Maharashtra University of Health Sciences. In other words, they were eligible and qualified. The Regulations would apply to appointments made after the Regulations came into force. We, therefore, find no reason to interfere with the order passed by the Grievance Committee. The petitioners to immediately comply with the said decision.

7. It will be open to the petitioners to make a fresh recommendation to the Respondent No.3, pointing out that the concerned teachers were appointed much before the Regulations came into force and they have been teaching in the medical college since the year 1991-92, 1992-93 and that the Regulations of 1998 would not apply to them. If inspite of that the Medical

Council does not recognise or consider the same, it is for the petitioners to approach this court to seek appropriate relief.

8. With the above observation, the petition is disposed of.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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